United Nations A/HRC/31/NGO/171

General Assembly

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Human Rights Council
Thirty-first session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02820(E)

Please recycle

Understanding of Forcible Transfer Must be Developed if its Perpetrators are to be Held to Account

The BADIL Resource Center for Palestinian Residency and Refugee Rights, congratulates the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on its recognition that the war crime and crime against humanity of forcible transfer can be underpinned by the creation of a 'coercive environment' which, in turn, forces individuals and families to leave their homes and communities. BADIL also supports UNRWA's assessment that the execution of demolitions against Palestinian homes and other structures by Israeli forces "exacerbates an already coercive environment, driving Bedouin communities off the land they have inhabited for decades".[1] Though UNRWA's analysis and change of terminology represents a positive step towards affording Palestinians the legal protection to which they are entitled, and the holding to account of perpetrators of international crimes, further progress in this area is required as a matter of great urgency.

Forcible transfer is a devastating offence, being recognized as a grave breach of the Fourth Geneva Convention as well as being classed as both a war crime and crime against humanity under the Rome Statute.

In its shift away from a limited understanding of forcible transfer as the physical removal of protected persons to other, specified locations, UNRWA has brought its legal analysis in-line with the consensus of international jurisprudence. Indeed, legal instruments, scholarly comment and case law from international criminal tribunals is unequivocal in asserting that any action by an occupying power or its agents which unlawfully forces members of an occupied population to leave their homes and communities may give rise to a finding of forcible transfer.

In its recognition of the role played by Israel's creation of a coercive environment in the forced displacement of Palestinians, UNRWA contributes to a clearer understanding of the reality on the ground, and promotes the delivery of justice to victims and accountability to perpetrators.

This is essential, as Israel's forcible transfer of Palestinians is ongoing. On 2 February 2016, Israeli forces destroyed 24 homes in the West Bank villages of Al Halaweh and Jinba. As a result, 134 Palestinians, including 69 children, were displaced and left homeless. Just four days later, Israel carried out more demolitions, with 26 Palestinian refugees, including 17 children, affected in the community of Abu Nwar, on the Jerusalem periphery.[2]

These latter demolitions were conducted as part of wider Israeli efforts to forcibly transfer thousands of Palestinian Bedouin to specified urban townships; efforts which would be economically, socially and culturally catastrophic for the affected communities, as well as acting as a precursor for the execution of Israel's 'E1 Master plan', entailing the construction of almost 3,700 housing units for Jewish Israeli settlers/colonizers.[3] It is clear, then, that Israel intends to follow the mass forcible transfer of Palestinians with vast settlement construction and expansion; creating facts on the ground and seeking to exercise permanent sovereignty over occupied Palestinian land; a practice wholly consistent with definitions of 'colonialism' adopted by UN General Assembly resolutions.

However, BADIL highlights that demolitions – as well as the prior issuing of demolition orders – represents just one coercive factor operating within what Israeli policy has rendered an almost impossible living environment for Palestinian Bedouin communities. For instance, not being able to access public water or electricity networks creates

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[1] UNRWA, 7th January 2016. *UN agency condemns demolition of homes of Palestinian Bedouin in West Bank*. Available at: http://www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families

[2] Ibid.

[3] BADIL. February 2015. *Displacement of Palestinians as a War Crime: information for the consideration of the Commission of Inquiry, established under United Nations Human Rights Council Resolution S-21/1*. pg.40. Available at: http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/displacement-as-war-crime-en.pdf

chronic health and hygiene issues, whilst expanding colony/settlement boundaries bring with them increased risk of harassment and violence from residents of such colonies.

BADIL also notes that the presence of a formal plan is not a prerequisite for a finding of forcible transfer, and any forced displacement of Palestinians resulting from any demonstrably coercive environment operating inside the occupied Palestinian territory (oPt) may serve as a material act upon which a *prima facie* case for forcible transfer may be based.

The notion of 'force' in this context is not restricted only to physical considerations, but also includes threats of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. This includes "threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will".[4]

Through this appropriate lens, a whole host of Israeli policies which serve to forcibly transfer Palestinians comes into focus, including denial of residency, implementation of a permit regime, land confiscation and denial of use, discriminatory zoning and planning, segregation, denial of natural resources and access to services, denial of refugee return, suppression of resistance and the permitting of unlawful acts by non-state actors.[5] To this end, it must also be necessarily acknowledged that Israel has created impossible living environments not just for Palestinians residing within the Jerusalem periphery, or even within Area C, but throughout the oPt as a whole – consisting of the West Bank, including East Jerusalem, and the Gaza Strip. In both its gravity and geographic scope, the issue of Israeli-perpetrated forcible transfer is vast.

Despite this, the international community has thus far failed to hold Israel accountable for its continuing perpetration of this international crime. This is a failure which has served only to embolden the Occupying Power in its conducting of such abuses.

To this end, BADIL reminds the international community that forcible transfer is a crime which confers legal obligations on third party states, with Common Article 1 of the Fourth Geneva Convention stipulating that "High Contracting Parties undertake to respect for the present Convention in all circumstances". Furthermore, as a grave breach of the Fourth Geneva Convention and thus one of the most heinous classifications of war crime, High Contracting Parties are obligated to search for individuals alleged to have committed – or to have ordered to be committed – forcible transfer, and to bring such persons before a domestic court or, alternatively, to hand such persons over to another High Contracting Party so that they may be brought before a court of law.

Therefore, it is of the utmost importance that the international community actively supports and encourages all steps to hold to account those responsible for the perpetration of international crimes, and to pursue a fair, just and durable solution to the Israel/Palestine question through mechanisms of international law rather than political bargaining. This rights-based approach is desperately required to bring to an end enduring Palestinian suffering, and to protect the relevance of international law.

Accordingly, the BADIL Resource Center for Palestinian Residency and Refugee Rights:

- Calls upon third party states, UN bodies, regional actors and international non-governmental organizations to join UNRWA in applying appropriate legal terminology of the present day reality in the oPt and identify Israel's creation of coercive environments for Palestinians and the resulting forced displacement as constituting forcible transfer;

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[4] For more information, see BADIL's June 2015 submission to the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967; *Israel's Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid*. Available at: http://www.badil.org/en/publication/press-releases/60-2015/4439-pr-en-1307155-25.html

[5] BADIL, 2014. *Forced Population transfer: The Case of Palestine. Introduction*. Available at: http://www.badil.org/en/press-releases/142-2012/3638-press-eng-53

- Calls upon third party states, UN bodies, regional actors and international non-governmental organizations to recognize that there is no requirement for forced displacement to take place as part of a formal plan to reach a finding of forcible transfer, and thus adopt a much wider angle of review in assessing Israeli-perpetrated forcible transfer;
- Calls upon High Contracting Parties to honor their obligation under Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's perpetration of forcible transfer of Palestinians inside the oPt;
- Calls upon High Contracting Parties to investigate Israel's policy of forcible transfer and search for individuals present on their respective territory who have materially participated in the forcible transfer of Palestinians, and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or to hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law.

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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Liberation, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Conditions for Saharawis living with disabilities continue to get worse in the Occupied Territories of Western Sahara

Morocco is a signatory to the UN Convention on the Rights of Persons with Disability which was adopted in 2006 and ratified by Morocco in 2009.

Despite this, Saharawis with disabilities suffer doubly as a result of the Morrocan occupation of Western Sahara, not only through routine human rights violations against the Saharawi population, but also as a result of the severe restrictions placed on NGOs working with people with disabilities. This deprives Saharawis with disabilities of the opportunities to live a dignified life and exercise their political, economic and social rights.

The few organisations providing services to Saharawi people with disabilities depend entirely on donations from the Saharawi population, as they are not financed or supported in any other way by the Moroccan state. Reasons for this are entirely political, as the Moroccan state would never support organisations which are pro self-determination of the Saharawi people and all Saharawi-led organisations automatically fall into this category. Over the past year, unemployment and poverty rates among the Saharawi population have increased significantly which means that disability organisations are now forced to reduce their services or to close as their already weak supporter base is dwindling further.

Disabled people of Saharawi origin confirm not only have difficulty accessing medical and rehabilitation services but also rarely have access to education. As a result, they are unable to obtain paid employment, which is already difficult for Saharawis. In many cases, they are unable to lead a dignified life, forced into begging and poverty, relying on the help and goodwill of others. Disabled people are also often subject to rape and other abuse.

There is a notable gap between the experiences of Moroccan and Saharawi people with disabilities, due to the complete lack of will on the part of the Moroccan authorities to support people with disabilities of Saharawi origin, mirroring the wider divide between the two groups across society.

Adala UK has conducted several interviews with Saharawi people with disabilities as well representatives of disability organisations:

> **Sidi Mohamad Aluat**, President of the disability NGO 'Absar Al Khayr', based in El Aaiun, says '*The Moroccan authorities do not allow us to register our organisation and we do not receive any government support due to our political position with regards to the status of Western Sahara and our belief in the right to self-determination. When we demand our rights as people with disabilities, or join political demonstrations, these are always brutally suppressed by the Moroccan forces.*'
>
> **Said Hadad**, a Saharawi man with a physical disability, stated that he had presented seven complaints of police violence to the Moroccan king's public prosecutor in El Aaiun but none of these had ever been investigated. His latest complaint was filed on 18th February 2015 under archive number 15/3126/17. Similarly, **Housine Nasiri**, another disabled man, told Adala UK that he had presented over ten official complaints of physical and mental force used against him to judges in El Aaiun which were also not investigated. His latest complaint was filed on 18th February 2015 under archive number 15/3126/16.

During 2015, the Moroccan authorities forcefully broke up peaceful protests by people with disabilities in Western Sahara, acting indiscriminately for instance against people in wheelchairs, under the pretext of 'maintaining public order'.

Any human rights violations committed against people with disabilities or any other citizen should of course be investigated and those responsible brought to justice. Unfortunately, judges and public prosecutors, as we have seen from the above accounts, do not investigate torture allegations and the climate of impunity of course means that legislation alone has no deterrent effect.

In order for the situation for disabled people in the Occupied Territories to improve, it is crucial to end the blockade on international NGOs and human rights organisations and observers to enter Western Sahara. More pressure is needed

from the International Community and specifically the UN to remind Morocco of its specific responsibilities according to the Convention on the Rights of Persons with Disability.

The Moroccan authorities must allow Saharawi disability organisations to operate freely, including being able to officially register and receive financial and other support from abroad, irrespective of the organisation's political views. Furthermore, the Moroccan government must provide the same services and assistance to Saharawi citizens with disabilities as those of Moroccan origin, without discrimination.

United Nations A/HRC/31/NGO/173

General Assembly

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24 February 2016

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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the World Barua Organization (WBO), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Latest Developments of the Human Rights Situations in India

I. General remarks on the impact of the work of the Human Rights Council (HRC)

(1) First of all, we would like to draw the Council's attention to the larger public debate in India on the human rights aspects of Indian policy making; which can be attributed to a crucial part to the reports of a number of mandates of the Special Procedures[1] as well as the corresponding debates in the framework of the Council's agenda. We note, for instance, debates within the Indian Union Government as well as with State governments on the best handling of protest under counter-terrorism measures, concerns expressed by the Indian judiciary including the Supreme Court on the factual ruling of current measures, namely the Armed Forces (Special Powers) Act of 1958 (AFSPA). Even soldiers and officials of state security institutions meanwhile feel encouraged to publicly give testimony on their acting in previous times and, thus, substantially casting doubts on the spirit and the means of the counter-terrorism measures. We, therefore, would foremost like to encourage the Human Rights Council to continue its observation with the Indian human rights situation, and we highly welcome the up-coming visit of the SR on housing in April.

II. Extrajudicial, summary or arbitrary executions

(2) Since the report of the SR on this subject in 2013[2], we note an improvement of the situation determined by previously massive extrajudicial executions in Manipur. The discussions of the findings and its follow-up opened access to the Indian Supreme Court. However, the situation still requires a continuous observation by independent human rights mechanisms to the alarming facts in each of the Northeastern States Manipur, Assam, Nagaland, Meghalaya and Arunachal Pradesh. Our experience says that such observation indispensably needs an international component such as by Special Procedures.

(3) We may draw your attention to some of the ongoing alarming facts: In Manipur, 14 people were killed including children below 12 years boys in 2015. Mrs. Ruisoting Aimol, age 55 of the Chandel district Manipur, was shot and killed at her home by Mr. Aditya Kapoor, Major of 20th Assam Rifle. On 12th January 2016, a bomb attack at the residence of Mr. Y. Rupachandra, Chief Editor of Impact TV (local channel) and Secretary of EGM (Editors' Guild Manipur) by a group of an undisclosed armed group. We express our fear that this group may be part of informal activities by state security institutions In Meghalaya, especially in Garo Hills, on 25th November, 2015, two civilians were shot and killed by India Armed Forces. On 6th January, 2016, there was a bomb blast at the public market place in Tura by which nine civilians were injured.[3] In sum, a credible national process in order to allow victims to speak about their experiences, to guarantee their access to Justice for victims, to guarantee accountability and punishment of the perpetrators as essential elements of such a national process. A real independent investigation into the crimes is still lacking.

(4) We echo the requests made by the United NGO-Mission of Manipur (UNMM) towards the HRC to:

a. recommend the Government of India to establish a Truth Commission at least in Manipur to protect human rights and peace building in Manipur;

b. approach the Government of India for a follow-up visit of the SR on extrajudicial execution in the region to Manipur, or better, to the entire Northeast of India;

c. urge the Government of India to follow-up the recommendations by CERD in 2013 and by CEDAW in 2014;

d. encourage the Indian parliament to look by itself into the investigations by the Jeevan Reddy Commission, the Second Administrative Reform Committee, or the Verma Commission, dealing with impunity in the context of AFSPA.

III. Counter terrorism

[1] Such as the mandates on Extrajudicial, Summary or Arbitrary Executions and Violence Against Women, or UN Treaty Bodies such as CEDAW. For details, see also our written report A/HRC/29/NGO/7 in June 2015.

[2] In particular A/HRC/23/47.Add.1 and the follow-up report A/HRC/29/37.Add.3, which also stressed the role of non-State actors in the violation of the right to life including killings by armed groups.

[3] We are able to provide more facts and details on each of the circumstances.

(5) The civilian population living in the North Eastern States of India, including Manipur in particular, is still trapped by the legal and political environment of AFSPA. Unfortunately, on 1st December 2015, the Governments of India and Manipur have extended the operation of AFSPA in Manipur for a further period of one year. Through its history of 58 years existence, AFSPA has not contributed to any kind of security for the people; rather the opposite.

(6) Human rights defenders in particular and civil society in general are severely hampered in addressing the human rights violations committed in the frame work of counter-terrorism and vice versa the crimes committed by armed groups. The Asian Human Right Commission has further stated that it is not uncommon for Indian Armed Forces, Indian Police Officers and Politicians in Manipur to maintain direct contact with the insurgent groups in Manipur sharing profit obtained from the black marketing of essential commodities in the state.[4] Such situations cast doubts about the concept of terrorism in general.

(7) The Government of India is allowing armed non-state actors to recruit even children below the age of 18 years. These forces are opening their counselling centres at different places in Manipur. In addition, some of the armed non-state actors are also abducting children and forcing them to be (child) soldier. Indian armed forces are further building their own huge cantonments and expanding their presence in great number and areas with the view that there was scheduled mineral mining of Chromite, Cobalt, Oil, or Limestone across the hill range of Ukhrul, Tamenglong, Chandel, or Churachandpur. It may lead to the presumption that there is a closed nexus.

(8) Contrary to 'Safe School' guidelines, the Indian Army has built its camps, for instance, at the approximate distance of 10 meter from the Manipur Public School (Koirengei), 30 meter from the Manipur College (Imphal) and also in the middle of the Manipur University (Imphal) for the last decades. There are more Indian Army camps located nearby the educational institutions causing serious threats to the students as frequent bomb blast have been reported causing death and injures among civilians. All these camps need to be relocated away from any educational institution as well as from public places. To make such demand more illustrative: eight human skeletons were recovered from the Tombisana High School located in Imphal, once used by the paramilitary forces during the 1980s.

(9) We echo the requests made by the United NGO-Mission of Manipur (UNMM) towards the HRC to:

1. make the Indian Government inviting the SR on counter-terrorism allowing him to witness the human rights violations particularly due to the counter terrorism activities;
2. encourage the Indian Government in order to fully investigate illegal drug trade and to invite the SR on counter-terrorism providing his expertise;

IV. Right to freedom of expression and peaceful assembly

(10) Although the Magistrate Court in Imphal (Manipur) has continuously ordered to release Ms. Irom Sharmila who has been on a hunger strike for over 14 years, last in January 2015, she still remains in custody. She demands the repeal of AFSPA. Ms. Sharmila stated before the judge: "I am tired of this cycle of release and re-arrest. Please put my case to trial once and for all. Let the case be decided".[5]

(11) We repeat our request to the HRC to:

1. encourage the Indian Government in order to release Ms. Irom Sharmila;

V. Truth and Reconciliation

(12) A number of governing institutions in India have established in the past commissions of investigation like the Justice Jeevan Reddy Commission (2005), Second Administration Commission (2007), Justice Santosh Hegde Commission (2013), or the Justice Verma Commission (2013). They altogether recommended to repeal AFSPA as well

[4] See http://www.humanrights.asia/news/ahrc-news/AHRC-STM-008-2016: January 15, 2016, INDIA: AFSPA should not be enforced in Manipur to support organised lawlessness benefiting illegal drug and weapon smuggling cartels.

[5] See at http://www.ndtv.com/article/india/court-rejects-attempt-to-suicide-charge-against-irom-sharmila-652245.

as to seek the truth and promote peace building. The Government of India rejected and never realized any of the recommendations of these commissions.

(13) We therefore request the HRC to:

1. communicate with the Government of India in order to invite the SR on the promotion of truth, justice, reparation and guarantees of non-recurrence that he may visit Manipur and other areas on the Northeast of India for providing his expertise and technical assistance in particular to establish a Truth and Reconciliation Commission in Manipur.

*United NGO-Mission of Manipur, an NGO without consultative status, shares the views expressed in this statement.